

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

CATHERINE ALEXANDER,

Plaintiff,

v.

TAKE-TWO INTERACTIVE SOFTWARE,
INC., et al.

Defendants.

Case No. 3:18-cv-0966-SMY

JURY TRIAL DEMANDED

PLAINTIFF’S OBJECTIONS TO DEFENDANTS’ RULE 26(a)(3) DISCLOSURES

COMES NOW, Plaintiff Catherine Alexander, by and through her attorneys, pursuant to Fed. R. Civ. P. 26(a)(3) makes the following objections to the Pre-Trial Disclosures served by Defendants:

I. OBJECTIONS TO LIVE TESTIFYING WITNESSES

CARRIE ROSEMAN

Defendants have listed a member of plaintiff’s trial team, Carrie Roseman, on their “may call” witness list. Ms. Roseman is a paralegal employed by Plaintiff’s attorneys, the Simon Law Firm, P.C, who has worked on this case since its inception. Ms. Roseman is a critical member of Plaintiff’s trial team. Plaintiff will be greatly prejudiced by Ms. Roseman being forced to prepare to testify and testifying when otherwise she would be assisting at trial.

Plaintiff objects to Ms. Roseman being called as a witness because Defendants failed to properly disclose Ms. Roseman as a potential witness in their initial Rule 26 disclosures or during discovery in this case. Federal Rule of Civil Procedure 26(a)(1)(A)(i) provides that a party must provide to other parties the name and, if known, the address and telephone number of each individual likely to have discoverable information that the disclosing party may use to

support its claims or defenses. Parties are obligated to supplement their responses under Rule 26(a) if the party learns the disclosure or response is incomplete and the additional information has not otherwise been made known to the other parties during discovery or in writing. FED. R. CIV. P. 26(e)(1). “If a party fails to provide information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless.” *Id.* 37(c)(1).

The sanction of exclusion is automatic and mandatory unless the sanctioned party can show that its violation of Rule 26(a) was either justified or harmless. *David v. Caterpillar, Inc.*, 324 F.3d 851, 857 (7th Cir. 2003) (quotations and citations omitted). In determining whether a party’s failure to disclose was substantially justified or harmless, courts in the Seventh Circuit examine four factors: (1) the prejudice or surprise to the party against whom the evidence is offered; (2) the ability of the party to cure the prejudice; (3) the likelihood of disruption to the trial; and (4) the bad faith or willfulness involved in not disclosing the evidence at an earlier date. *Hess v. White Castle Sys. Inc., No. 19-CV-274-RJD*, 2020 WL 1529533, at *1 (S.D. Ill. Mar. 31, 2020) (quoting *David*, 324 F.3d at 857).

Here, the prejudice to Plaintiff is both clear and severe: Ms. Roseman is a critical member of Plaintiff’s trial team. She is a paralegal who has worked for the Simon Law Firm for more than eleven years and worked with Mr. Simon on many trials during that time period. She is fully aware of Plaintiff’s legal strategies and will be needed throughout the trial as a valuable and needed member of the trial team. She has also worked on this case since it was filed. The prejudice to Plaintiff cannot be cured. Ms. Roseman cannot be replaced with another paralegal at this late date and it is vital to Plaintiff’s case that she be able to assist plaintiff’s trial team during the trial.

For this reason, among others, it is also clear that the third *Caterpillar* factor, disruption to the trial, weighs in favor of a finding that the failure to disclose was not substantially justified or harmless. Ms. Roseman being occupied by preparing to testify and by actually testifying will impact the ability of Plaintiff's counsel both to prepare for trial and to respond to issues as they arise at trial. This, in turn, impacts everything from preparation of exhibits and witnesses to examination of witnesses and presentation of evidence.

As to the fourth and final factor, Plaintiff does not wish to speculate that Defense counsel acted in bad faith or willfully by failing to identify Ms. Roseman as a potential witness earlier. However, Defendants have known of Ms. Roseman's involvement for nearly two years, have never expressed any interest in obtaining discovery from her and never supplemented their rule 26 disclosures as required by the rule. The prejudice to Plaintiff by calling a member of her trial team as a witness would have been obvious to Defendants. Lastly, any "evidence" Ms. Roseman may possess is not relevant which makes her appearance on the Defendant's witness list suspect.

Ms. Roseman's limited secretarial involvement in sending the applications to register Plaintiff's copyrights is documented in its entirety in the attached Exhibits A–J. These documents fall into three categories and represent everything Ms. Roseman did to assist in the process: (1) cover letters signed by Ms. Roseman with irrelevant administrative details accompanying the copyright applications (Exhibits A–F); (2) return receipts from mailing the copyright applications bearing Ms. Roseman's initials and internal record-keeping information for the Simon Law Firm (Exhibit G); and (3) copies of emails received in response to Status of Application Requests submitted by Ms. Roseman (Exhibits H–J). Defendants have had all of these documents for nearly two years. The first time Defendants identified Ms. Roseman as a potential witness was in their Rule 26(a)(3) Pretrial Disclosures (Dkt. 223) filed on September 18, 2020. They never deposed her, never sought discovery regarding any information she held or

otherwise indicated that they intended to call her at trial or even viewed any information she may have as relevant prior to that point. Ms. Roseman's limited and non-substantive involvement in seeking status updates from the Copyright Office on Plaintiff's applications to register her copyrights was not a surprise to Defendants.

It is difficult to imagine a good faith basis to call Ms. Roseman as a witness. Ms. Roseman did not participate in any substantive communications with the Copyright Office and any communication she had with Plaintiff is privileged. The only documents on which Ms. Roseman's name appear were not even listed as exhibits by Defendants. (*See* Exhibits A–J). Even if Defendant had sought to use these documents as exhibits at trial (they are not relevant to the claim or defense of any party) Plaintiff does not and will not dispute the authenticity of or foundation for these documents. Therefore, it is not necessary for Ms. Roseman to be called for that purpose either. Ms. Roseman had no direct or substantive communications with the copyright office. Ms. Roseman merely submitted Status of Application Requests by using an online form pre-generated by the Copyright Office's website, much like how one would track a package through UPS. Each time, the copyright office would send an email stating the status of the application. (Exhibits H–J). Put simply, Ms. Roseman filled out a form on the Copyright Office website (https://www.copyright.gov/forms/status_form.html) that required she input the following information into the form's fields: contact information, titles of work, author, payment method, date of application and whether a delivery confirmation was received. The Copyright Office responded to the inquiries via email to Ms. Roseman simply stating an expected time for response. In light of this Court's finding that it is undisputed that Plaintiff possesses valid copyrights, Ms. Roseman's testimony is not relevant to that issue either (assuming it ever would have been). Doc. 228 at 5 (this Court's Memorandum and Order on the parties Motions for

Summary Judgment) (“It is undisputed that Alexander holds valid copyrights for the five tattoos at issue and that Defendants copied her copyrighted works.”).

To summarize for the fourth factor: (1) Ms. Roseman is an essential member of Plaintiff’s trial team and Plaintiff’s ability to present her case will be hindered by Ms. Roseman acting as a witness; (2) Defendants had plenty of opportunity (nearly two years, in fact) to disclose Ms. Roseman as a witness earlier and failed to do so; (3) the information Ms. Roseman may possess regarding the copyrights is insubstantial and irrelevant; (4) Ms. Roseman certainly does not possess any information relevant to Defendants’ remaining affirmative defenses of implied license, fair use, and lack of damages; and (5) Ms. Roseman’s testimony would be irrelevant to the issue of the validity of Plaintiff’s copyright.

For these reasons, Defendants’ failure to disclose Ms. Roseman as a witness is not substantially justified or harmless and the applicable rules require the “automatic and mandatory” sanction of exclusion because Defendants cannot meet their burden to show that their failure to follow the rules was justified or harmless.

II. TESTIMONY THROUGH DEPOSITION DESIGNATION

Defendants’ Rule 26(a)(3) Pretrial Disclosures (Doc. 223) states that “Defendants do not expect to present testimony by way of deposition at this time,” and Defendants “reserve the right to designate such testimony based upon any deposition designations offered by Plaintiff.”

Plaintiff objects to Defendants’ introduction of any untimely disclosed testimony by deposition designation and reserves her right to introduce any deposition testimony in response to designations made by Defendants.

III. OBJECTIONS TO EXHIBITS

Plaintiff objects to any exhibit, or portion of any exhibit, that violates a granted motion in limine or any stipulations regarding evidence made by the parties, whether explicitly stated

below or not. Plaintiff's statements below that she has "no objection" to an exhibit is not a waiver of her right to object on the basis of any granted motion in limine or stipulations.

Defendants' Exh. No.	Description	Plaintiff's Objections
1	Physical Exhibit: <i>WWE 2K16</i> for XBox One (Defendants' Summary Judgment Ex. 16)	No objection
2	Physical Exhibit: <i>WWE 2K17</i> for XBox One (Defendants' Summary Judgment Ex. 17)	No objection
3	Physical Exhibit: <i>WWE 2K18</i> for XBox One (Defendants' Summary Judgment Ex. 18)	No objection
4	Webpage for <i>WWE 2K16</i> , Standard Edition, available at https://2k.com/en-US/game/wwe-2k16-standard-edition/	No objection
5	<i>WWE 2K16</i> Gameplay Image of Randy Orton (Bogost Rpt. at 28)	No objection
6	Video Recording of <i>WWE 2K16</i> (Defendants' Summary Judgment Ex. 1, Appendix A)	No objection
7	<i>WWE 2K16</i> Gameplay - Roman Reigns vs. Randy Orton	No objection
8	<i>WWE 2K16</i> Gameplay - John Cena vs. Randy Orton	No objection
9	<i>WWE 2K16</i> Gameplay - Royal Rumble	No objection
10	<i>WWE 2K16</i> Gameplay - Randy Orton vs. John Cena	No objection
11	<i>WWE 2K16</i> Gameplay - Seth Rollins vs. Stone Cold Steve Austin	No objection
12	Webpage for <i>WWE 2K17</i> , Standard Edition, <i>WWE 2K17</i> , available at https://2k.com/en-US/game/wwe-2k17-standard-edition/	No objection
13	Video Recording of <i>WWE 2K17</i> (Defendants' Summary Judgment Ex. 1, Appendix B)	No objection
14	<i>WWE 2K17</i> Gameplay - Randy Orton vs. Bubba Ray Dudley	No objection
15	<i>WWE 2K17</i> Gameplay - Randy Orton vs. Kane	No objection
16	<i>WWE 2K17</i> Gameplay - Royal Rumble	No objection
17	<i>WWE 2K17</i> Gameplay - Randy Orton vs. John Cena	No objection
18	<i>WWE 2K17</i> Gameplay - Roman Reigns vs. Brock Lesnar	No objection
19	Webpage for <i>WWE 2K18</i> , Standard Edition, <i>WWE 2K18</i> , available at https://2k.com/en-US/game/wwe-2k18-standard-edition/	No objection
20	<i>WWE 2K18</i> Load Screen Image (Bogost Rpt. at 20)	No objection
21	<i>WWE 2K18</i> Menu Options Image (Bogost Rpt. at 20)	No objection

Defendants' Exh. No.	Description	Plaintiff's Objections
22	WWE 2K18 Play / One-on-One Options Image (Bogost Rpt. at 20)	No objection
23	WWE 2K18 Store / Purchasable Options Image (Bogost Rpt. at 20)	No objection
24	WWE 2K18 Gameplay Image of Randy Orton (Bogost Rpt. at 29)	No objection
25	Video Recording of WWE 2K18 (Defendants' Summary Judgment Ex. 1, Appendix C)	No objection
26	WWE 2K18 Gameplay - Randy Orton vs. Dean Ambrose	No objection
27	WWE 2K18 Gameplay - Roman Reigns vs. Randy Orton	No objection
28	WWE 2K18 Gameplay - Royal Rumble	No objection
29	WWE 2K18 Gameplay - Randy Orton vs. Seth Rollins	No objection
30	WWE 2K18 Gameplay - Brock Lesnar vs. Neville	No objection
31	Webpage titled "WWE's history of video games" from WWE.com, available at https://www.wwe.com/article/wwe-video-games-history	R, H
32	Photo of Randy Orton, Bates stamped TAKE-TWO_0000913 (Confidential)	No objection
33	Photo of Randy Orton, Bates stamped TAKE-TWO_0000914 (Confidential)	No objection
34	Photo of Randy Orton, Bates stamped TAKE-TWO_0000918 (Confidential)	No objection
35	Photo of Randy Orton, Bates stamped TAKE-TWO_0000909 (Confidential)	No objection
36	Photo of Randy Orton, Bates stamped TAKE-TWO_0000910 (Confidential)	No objection
37	Photo of Randy Orton, Bates stamped TAKE-TWO_0000911 (Confidential)	No objection
38	Photo of Randy Orton, Bates stamped TAKE-TWO_0000912 (Confidential)	No objection
39	Photo of Randy Orton, Bates stamped TAKE-TWO_0000915 (Confidential)	No objection
40	Photo of Randy Orton, Bates stamped TAKE-TWO_0000916 (Confidential)	No objection
41	Photo of Randy Orton, Bates stamped TAKE-TWO_0000917 (Confidential)	No objection
42	Photo of Randy Orton, Bates stamped TAKE-TWO_0000919 (Confidential)	No objection

Defendants' Exh. No.	Description	Plaintiff's Objections
43	Photo of Randy Orton, Bates stamped TAKE-TWO_0000920 (Confidential)	No objection
44	Photo of Randy Orton, Bates stamped TAKE-TWO_0000921 (Confidential)	No objection
45	Photo of Randy Orton, Bates stamped TAKE-TWO_0000922 (Confidential)	No objection
46	Photo of Randy Orton, Bates stamped TAKE-TWO_0000923 (Confidential)	No objection
47	Photo of Randy Orton, Bates stamped TAKE-TWO_0000924 (Confidential)	No objection
48	Photo of Randy Orton, Bates stamped TAKE-TWO_0000925 (Confidential)	No objection
49	Photo of Randy Orton, Bates stamped TAKE-TWO_0000926 (Confidential)	No objection
50	Photo of Randy Orton, Bates stamped TAKE-TWO_0000927 (Confidential)	No objection
51	Photo of Randy Orton, Bates stamped TAKE-TWO_0000928 (Confidential)	No objection
52	Photo of Randy Orton, Bates stamped TAKE-TWO_0000929 (Confidential)	No objection
53	Drawing of Tribal Tattoo, Bates stamped ALEXANDER000040	No objection
54	Photo of Back Tattoo with Drawing, Bates stamped ALEXANDER000038	No objection
55	Photo of Back Tattoo with Drawing (Alexander Dep. Ex. 6)	No objection
56	Photo of Arm Tattoo, Bates stamped ALEXANDER000044	No objection
57	Photo of Randy Orton, front view, Bates stamped ALEXANDER000043	No objection
58	Photo of Arm Tattoo, Bates stamped ALEXANDER000048	No objection
59	Photo of Randy Orton, side view, Bates stamped ALEXANDER000045	No objection
60	Skin and Tattoo Image for Character, Bates stamped TAKE-TWO_0000798 (Confidential)	No objection
61	Skin and Tattoo Image for Character, Bates stamped TAKE-TWO_0000799 (Confidential)	No objection
62	Skin and Tattoo Image for Character, Bates stamped TAKE-TWO_0000800 (Confidential)	No objection

Defendants' Exh. No.	Description	Plaintiff's Objections
63	Skin and Tattoo Image for Character, Bates stamped TAKE-TWO_0000801 (Confidential)	No objection
64	Skin and Tattoo Image for Character, Bates stamped TAKE-TWO_0000802 (Confidential)	No objection
65	Skin and Tattoo Image for Character, Bates stamped TAKE-TWO_0000803 (Confidential)	No objection
66	Skin and Tattoo Image for Character, Bates stamped TAKE-TWO_0000804 (Confidential)	No objection
67	Skin and Tattoo Image for Character, Bates stamped TAKE-TWO_0000805 (Confidential)	No objection
68	Skin and Tattoo Image for Character, Bates stamped TAKE-TWO_0000806 (Confidential)	No objection
69	Skin and Tattoo Image for Character, Bates stamped TAKE-TWO_0000807 (Confidential)	No objection
70	Skin and Tattoo Image for Character, Bates stamped TAKE-TWO_0000808 (Confidential)	No objection
71	Skin and Tattoo Image for Character, Bates stamped TAKE-TWO_0000809 (Confidential)	No objection
72	Skin and Tattoo Image for Character, Bates stamped TAKE-TWO_0000810 (Confidential)	No objection
73	Skin and Tattoo Image for Character, Bates stamped TAKE-TWO_0000811 (Confidential)	No objection
74	Skin and Tattoo Image for Character, Bates stamped TAKE-TWO_0000812 (Confidential)	No objection
75	Skin and Tattoo Image for Character, Bates stamped TAKE-TWO_0000813 (Confidential)	No objection
76	Skin and Tattoo Image for Character, Bates stamped TAKE-TWO_0000814 (Confidential)	No objection
77	Skin and Tattoo Image for Character, Bates stamped TAKE-TWO_0000815 (Confidential)	No objection
78	Skin and Tattoo Image for Character, Bates stamped TAKE-TWO_0000816 (Confidential)	No objection
79	Skin and Tattoo Image for Character, Bates stamped TAKE-TWO_0000817 (Confidential)	No objection
80	Skin and Tattoo Image for Character, Bates stamped TAKE-TWO_0000818 (Confidential)	No objection
81	Skin and Tattoo Image for Character, Bates stamped TAKE-TWO_0000819 (Confidential)	No objection

Defendants' Exh. No.	Description	Plaintiff's Objections
82	Skin and Tattoo Image for Character, Bates stamped TAKE-TWO_0000820 (Confidential)	No objection
83	Skin and Tattoo Image for Character, Bates stamped TAKE-TWO_0000821 (Confidential)	No objection
84	Skin and Tattoo Image for Character, Bates stamped TAKE-TWO_0000822 (Confidential)	No objection
85	September 1, 2009 Booking Contract between World Wrestling Entertainment, Inc. and Randal Orton, Bates stamped WWE_Alexander0000001–WWE_Alexander0000026 (Confidential)	No objection
86	February 11, 2013 Agreement between World Wrestling Entertainment, Inc. and Take-Two Interactive Software, Inc., Bates stamped TAKE- TWO_0000498–TAKE-TWO_0000542 (Confidential)	No objection
87	Redacted February 11, 2013 Agreement between World Wrestling Entertainment, Inc. and Take-Two Interactive Software, Inc.	No objection
88	January 6, 2016 Amendment One to Agreement between World Wrestling Entertainment, Inc. and Take-Two Interactive Software, Inc., Bates stamped TAKE-TWO_0000543–TAKE-TWO_0000559 (Confidential)	No objection
89	Redacted January 6, 2016 Amendment One to Agreement between World Wrestling Entertainment, Inc. and Take-Two Interactive Software, Inc.	No objection
90	February 12, 2013 Master Developer Agreement between Yuke's Co. Ltd. and 2K Sports, Inc., Bates stamped TAKE-TWO_0000560-TAKE-TWO_0000609 (Confidential)	No objection
91	Chart of <i>WWE 2K</i> Franchise sales since Apr 2015, Bates stamped TAKE- TWO_0001332 (Highly Confidential)	No objection
92	Chart of <i>WWE 2K</i> Franchise sales since Apr 2015, Bates stamped TAKE- TWO_0000983 (Highly Confidential)	No objection
93	Schedules of <i>WWE 2K</i> Sales and Profits (Malackowski Rpt. App. C) (Highly Confidential)	No objection
94	November 5, 2018 Plaintiff Catherine Alexander's Objections and Responses to Defendants Take-Two Interactive Software, Inc., 2K Games, Inc., 2K Sports, Inc., and Visual Concepts Entertainment's First Set of Requests for Admissions to Plaintiff Catherine Alexander, Dkt. No. 95	Disc.

Defendants' Exh. No.	Description	Plaintiff's Objections
95	October 15, 2018 Plaintiff's Objections and Responses to Defendants Take- Two Interactive Software, Inc., 2K Games, Inc., 2K Sports, Inc., and Visual Concepts Entertainment's First Set of Interrogatories to Plaintiff Catherine Alexander	Disc.
96	January 7, 2019 Plaintiff Catherine Alexander's Objections and Responses to Defendants Take-Two Interactive Software, Inc., 2K Games, Inc., 2K Sports, Inc., and Visual Concepts Entertainment's Second Set of Requests for Admission to Plaintiff Catherine Alexander, Dkt. No. 108	Disc.
97	November 19, 2018 Letter from Anthony Simon regarding Plaintiff's Objections and Responses to Defendants' First Set of Interrogatories and Plaintiff's Objections and Responses to Defendants' First Set of Requests for Production	Disc.
98	January 10, 2019 Plaintiff's Objections and Supplemental Responses to Defendants Take-Two Interactive Software, Inc., 2K Games, Inc., 2K Sports, Inc., and Visual Concepts Entertainment's First Set of Interrogatories to Plaintiff Catherine Alexander	Disc.
99	January 7, 2019 Plaintiff Catherine Alexander's Objections and Responses to Defendants Take-Two Interactive Software, Inc., 2K Games, Inc., 2K Sports, Inc., and Visual Concepts Entertainment's Second Set of Interrogatories to Plaintiff Catherine Alexander	Disc.
100	October 15, 2018 Plaintiff's Objections and Responses to Defendants Take- Two Interactive Software, Inc., 2K Games, Inc., 2K Sports, Inc., and Visual Concepts Entertainment's First Set of Requests for Production to Plaintiff Catherine Alexander	Disc.
101	January 10, 2019 Plaintiff's Objections and Supplemental Responses to Defendants Take-Two Interactive Software, Inc., 2K Games, Inc., 2K Sports, Inc., and Visual Concepts Entertainment's First Set of Requests for Production to Plaintiff Catherine Alexander	Disc.
102	February 25, 2019 Letter United States Copyright Office to The Simon Law Firm re Bible Verse Design, Bates stamped ALEXANDER000067- ALEXANDER000069	403, R, ML
103	State of Missouri Patron Consent Form (Alexander Dep. Ex. 2)	R, F
104	November 4, 2019 Declaration of Randy Orton (Defendants' Summary Judgment Ex. 2)	ML, H, Expert Opinion

Defendants’ Exh. No.	Description	Plaintiff’s Objections
105	November 27, 2018 Declaration of Gary Glatstein, Bates stamped TAKE- TWO_0001327-TAKE-TWO_0001331	ML, H, Expert Opinion
106	February 23, 2018 Declaration of Thomas Ray Cornett in <i>Solid Oak Sketches, LLC v. 2K Games, Inc. et al.</i> , 15-cv-724 (SDNY) (Jablonski Rpt. Ex. 3)	R, ML, H, Expert Opinion
107	March 13, 2018 Declaration of Deshawn Morris a/k/a Shawn Rome in <i>Solid Oak Sketches, LLC v. 2K Games, Inc. et al.</i> , 15-cv-724 (SDNY) (Jablonski Rpt. Ex. 4)	R, ML, H, Expert Opinion
108	February 7, 2018 Declaration of Justin Wright in <i>Solid Oak Sketches, LLC v. 2K Games, Inc. et al.</i> , 15-cv-724 (SDNY) (Jablonski Rpt. Ex. 5)	R, ML, H, Expert Opinion
109	DeMello M., <i>Bodies of Inscription: A Cultural History of the Modern Tattoo Community</i> (Duke University Press Books) (2000)	R, H, Expert Opinion
110	Sanders, C.R., <i>Customizing the Body: The Art and Culture of Tattooing</i> (Temple University Press, Revised Ed.) (2008)	R, H, Expert Opinion
111	Alvrus, A., D. Wright and C. F. Merbs (2001). “Examination of tattoos on mummified tissue using infra-red reflectography.” <i>Journal of Archaeological Science</i> 28(4): 395–400	R, H, Expert Opinion
112	Ambrose, W. (2012). “Oceanic tattooing and the implied Lapita ceramic connection.” <i>Journal of Pacific Archaeology</i> 3(1): 1–21	R, H, Expert Opinion
113	Bianchi, R. S. (1986) “Tatowierung.” <i>Lexikon der Ägyptologie</i> (VI) at 145–46 (W. Helck & E. Otto, VI ed., 1986)	R, H, Expert Opinion
114	Dorfer, L. <i>et al.</i> (1999). “A Medical Report from the Stone Age?” <i>Lancet</i> 18;354(9183):1023–1025	R, H, Expert Opinion
115	Pabst M. A. <i>et al.</i> (2009). “The Tattoos of the Tyrolean Iceman: A Light Microscopical, Ultrastructural and Element Analytical Study.” <i>Journal of Archaeological Science</i> 36(10):2335–2341	R, H, Expert Opinion
116	Samadelli, M. <i>et al.</i> (2015). “Complete mapping of the tattoos of the 5300- year-old Tyrolean Iceman.” <i>Journal of Cultural Heritage</i> 16(5): 753–758	R, H, Expert Opinion
117	Schildkrout, E. (2004). “Inscribing the body.” <i>Annual Review of Anthropology</i> 33: 319–344	R, H, Expert Opinion
118	Webpage titled “31 World’s Best Matching Tattoos for Couples” from BestPickr, available at http://bestpickr.com/matching-couples-tattoos	R, H, Expert Opinion

Defendants’ Exh. No.	Description	Plaintiff’s Objections
119	August 16, 2015 Article titled “From counter-culture to mainstream: Why the red-hot tattoo boom is bound to end” from National Post, available at https://nationalpost.com/news/canada/why-this-red-hot-tattoo-boom-is-bound-to-end-with-regret-again	R, H, Expert Opinion
120	September 25, 2013 Article titled “Justin Bieber’s Bible Psalm Tattoo on the Back of His Shoulder” from PopStarTats, available at www.popstartats.com/justin-bieber-tattoos/shoulder-bible-psalm/	R, H, Expert Opinion
121	July 17, 2009 Article titled “Oetzi iceman’s tattoos came from fireplace” from DiscoveryNews, available at http://www.nbcnews.com/id/31965532/ns/technology_and_science-science/t/oetzi-icemans-tattoos-came-fireplace/	R, H, Expert Opinion
122	January 28, 2015 Article titled “Peak of Ink” from Inlander, available at https://www.inlander.com/spokane/peak-of-ink/Content?oid=2405964	R, H, Expert Opinion
123	February 3, 2014 Article titled “People always say the same thing about tattoos” from BBC News, available at https://www.bbc.com/news/magazine-25330947	R, H, Expert Opinion
124	August 26, 2014 Article titled “Siberian Mummy Burial Row” from International Business Times, available at https://www.ibtimes.co.uk/siberian-mummy-burial-row-villagers-want-princess-ukok-reburied-stop-natural-disasters-1462705	R, H, Expert Opinion
125	September 30, 2013 Article titled “The rise of the text tattoo” from BBC News, available at https://www.bbc.com/news/magazine-24306141	R, H, Expert Opinion
126	Webpage titled “Top 43 Bible Verse Tattoo Ideas” from Next Luxury, available at https://nextluxury.com/mens-style-and-fashion/bible-verse-tattoos-for-men/	R, H, Expert Opinion
127	Webpage titled “Top 55 Best Rose Tattoos for Men” from Improb.com, available at https://improb.com/best-rose-tattoos-for-men/	R, H, Expert Opinion
128	December 10, 2012 Blog post titled “Tattooing in Ancient Egypt Part 2: The Mummy of Amunet”, available at https://blogs.ucl.ac.uk/researchers-in-museums/tag/dr-daniel-fouquet/	R, H, Expert Opinion
129	Tweet from Louvre Museum, available at https://twitter.com/MuseeLouvre/status/1245374207552258049/photo/1	R, H, Expert Opinion

Defendants’ Exh. No.	Description	Plaintiff’s Objections
130	Louvre Webpage for “Figurine of a naked woman”, available at https://www.louvre.fr/en/oeuvre-notices/figurine-naked-woman	R, H, Expert Opinion
131	June 26, 2014 British Museum Article titled “Tattoos in ancient Egypt and Sudan”, available at https://blog.britishmuseum.org/tattoos-in-ancient-egypt-and-sudan/	R, H, Expert Opinion
132	Archaeology.org Webpage titled “Faience Figuring and Bowl”, available at https://www.archaeology.org/issues/107-features/tattoos/1352-faience-egypt-amunet-hathor-bes	R, H, Expert Opinion
133	Webpage displaying image titled “Vyvyn Lazonga’s Hands” (2014) available at https://www.sdbarber.com/tattooed-portraits-2013-2014/ppicfvr2dpf8hm20tfyv2v1k3i246s	R, H, Expert Opinion
134	Webpage displaying image titled “Tattooed Self Portrait 4” (2008), available at https://www.sdbarber.com/tattooed-portraits-2008/2aaum9x6ons0wqguxlh2gvh74eyxp0	R, H, Expert Opinion
135	Webpage displaying image titled “Portrait of the Artist, Luke Stewart, Head Study” (2009), available at https://www.sdbarber.com/tattooed-portraits-2009/e04fzyir2eusmwvoqbnyb96awh4u6q	R, H, Expert Opinion
136	Page titled “Randy Orton” on Smackdown Hotel (Bogost Rpt. Ex. 4)	R, H
137	January 15, 2017 Article titled “PC Monitor Display Sizes Continues to Grow” from TechTalk (Bogost Rpt. Ex. 5)	R, H
138	September 5, 2015 Article titled “TV Screens Are Getting Bigger and Bigger” from Statista (Bogost Rpt. Ex. 6)	R, H
139	January 16, 2018 Article titled “WWE 2K18 roster: Meet the Superstars joining the list of playable characters” from WWE (Bogost Rpt. Ex. 7)	R, H
140	Article titled “WWE 2K18 New Moves Pack is Out Today” from WWE (Bogost Rpt. Ex. 8)	R, H
141	October 21, 2017 Wiki Entry titled “Game Modes” from IGN WWE 2K18 Wiki Guide (Bogost Rpt. Ex. 9)	R, H
142	October 18, 2017 Article titled “WWE 2K18: Review of MyCareer and Road to Glory Modes” from the Bleacher Report (Bogost Rpt. Ex. 10)	R, H
143	Post on WWEGames Subreddit titled “Skip show intros on WWE2K18 MyCareer” (Bogost Rpt. Ex. 13)	R, H

Defendants' Exh. No.	Description	Plaintiff's Objections
144	Post on <i>WWE 2K17</i> Steam Community Board titled "Skipping intros?" (Bogost Rpt. Ex. 14)	R, H
145	Nick Montfort, <i>et al.</i> , "10 PRINT CHR\$(205.5+RND(1)); : GOTO 10", available at https://10print.org/10_PRINT_121114.pdf	R, H
146	Photo of <i>WWE 2K</i> Gameplay (Bogost Rpt. at 18)	No objection
147	Photo of <i>WWE 2K</i> Gameplay (Bogost Rpt. at 19)	No objection
148	Photo of <i>WWE 2K</i> Gameplay (Bogost Rpt. at 19)	No objection
149	Photo of <i>WWE 2K</i> Gameplay (Bogost Rpt. at 19)	No objection
150	Photo of <i>WWE 2K</i> Gameplay (Bogost Rpt. at 19)	No objection
151	Photo of <i>WWE 2K</i> Gameplay (Bogost Rpt. at 29)	No objection
152	Photo of <i>WWE 2K</i> Gameplay (Bogost Rpt. at 29)	No objection
153	Photo of <i>WWE 2K</i> Gameplay (Bogost Rpt. at 30)	No objection
154	Questionnaire (Sample Web Screenshots) (Jay Report App. D)	F, H
155	Background Information on the YouGov Online Panel (Jay Report App. F)	F, H
156	Background Information on the Research Now/SSI Online Panel (Jay Report App. G)	F, H
157	Main Reasons and Other Reasons Survey Respondents Gave for Buying a <i>WWE 2K</i> Video Game (Jay Report App. H)	F, H
158	Which Wrestlers' Depiction Was a Reason for Buying a <i>WWE 2K</i> Video Game and What Features of Aspects of Their Appearance Were Important to Depict (Jay Report App. I)	F, H
159	Reference Guide on Survey Research, Federal Reference Manual on Scientific Evidence, 3rd Ed. (2011)	R, H, F, Expert Opinion
160	Excerpt from Federal Manual for Complex Litigation, 4th Ed. (2004), §11.493	R, H, F, Expert Opinion
161	Image of merchandise titled "WWE Wrestling Judgment Day 2008 T Shirt Triple H Shawn Michaels Undertaker XL," available at https://www.ebay.com/itm/WWE-Wrestling-Judgment-Day-2008-T-Shirt-Triple-H-Shawn-Michaels-Undertaker-XL/303408065564?hash=item46a487ac1c:g:ZA4AAOSwHv1d-rOO	R, H

Defendants' Exh. No.	Description	Plaintiff's Objections
162	Image of merchandise titled "WWE Wrestling Royal Rumble 2008 PPV T- Shirt 3XL Black Randy Orton Rey Mysterio," available at https://www.ebay.com/itm/WWE-Wrestling-Royal-Rumble-2008-PPV-T- Shirt-3XL-Black-Randy-Orton-Rey-Mysterio/283836587129?hash=item4215fa9c79:g:pdCAAOSwJrBehl-D	R, H
163	Webpage for April 2008 WWE Magazine via Prowrestling Fandom Wiki, available at https://prowrestling.fandom.com/wiki/WWE_Magazine_-_April_2008	R, H
164	Image of merchandise titled "WWE Bragging Rights 2009 PPV Promo Poster, Undertaker, CM Punk, Excellent Cond," available at https://www.ebay.com/itm/WWE-Bragging-Rights-2009-PPV-Promo-Poster- Undertaker-CM-Punk-Excellent-Cond/173570690472?hash=item28699e8da8:g:3~YAAOSwnVRbtbUc	R, H
165	Image of merchandise titled "RANDY ORTON Med THE LEGEND Killer 2002 WWE WWF WRESTLING Tee Shirt New Deadstock," available at https://www.ebay.com/itm/RANDY-ORTON-Med-THE-LEGEND-Killer-2002-WWE-Wwf-WRESTLING-Tee-Shirt-New-Deadstock/353067731803?hash=item52347a0b5b:g:eaEAAOSw9~xerxug	R, H
166	Image of merchandise titled "2004 WWF UNFORGIVEN Promo T-SHIRT Triple H VS Randy Orton WWE Rare VTG RAW L," available at https://www.ebay.com/itm/2004-WWF-UNFORGIVEN-Promo-T-SHIRT- Triple-H-VS-Randy-Orton-WWE-Rare-VTG-RAW-L/263906290659?hash=item3d720a6be3:g:arcAAOSwKWxbh0Hd	R, H
167	Image of merchandise titled "WWE Wrestling Armageddon 2007 PPV T-Shirt 3XL Black Randy Orton Undertaker Edge," available at https://www.ebay.com/itm/WWE-Wrestling-Armageddon-2007-PPV-T-Shirt-3XL-Black-Randy-Orton-Undertaker-Edge/283836586487?hash=item4215fa99f7:g:OucAAOSw0NZehl45	R, H

Defendants' Exh. No.	Description	Plaintiff's Objections
168	Image of merchandise titled "2007 Royal Rumble Official Poster Rare!! 27x39 Blast Area PPV Poster WWF WWE," available at https://www.ebay.com/itm/2007-Royal-Rumble-Official-Poster-Rare-27x39-Blast-Area-PPV-Poster-WWF-WWE/133371986052?hash=item1f0d970084:g:xEgAAOSw1mdefCaZ	R, H
169	Image of merchandise titled "WWE RANDY ORTON NO MERCY CARDBOARD POSTER (NEW)," available at https://www.ebay.com/itm/WWE-RANDY-ORTON-NO-MERCY-CARDBOARD-POSTER-NEW/154051309241?hash=item23de2c6eb9:g:pNoAAOSwlGZfPGCU	R, H
170	Demonstratives for Use with Ian Bogost, Ph.D.	D, NP
171	Demonstratives for Use with Nina Jablonski, Ph.D.	D, NP
172	Demonstratives for Use with E. Deborah Jay, Ph.D.	D, NP
173	Demonstratives for Use with Edward Kiang	D, NP
174	Demonstratives for Use with Mark Little	D, NP
175	Demonstratives for Use with James Malackowski	D, NP
176	Demonstratives for Use with Randy Orton	D, NP
177	Demonstratives for Use with Chris Snyder	D, NP

Objection Key	
H	Hearsay
R	Relevance
ML	Subject to Motion in Limine
F	Foundation
403	Prejudicial
Expert Opinion	Undisclosed Expert Opinion
Disc.	Plaintiff objects to reading Plaintiff's objections to discovery requests to the jury. Plaintiff further objects to the introduction of any answers in Plaintiff's responses to discovery that violate any granted motion in limine or any stipulations regarding evidence made by the parties.
D	Demonstrative
NP	Not produced to Plaintiff

Dated: October 16, 2020

Respectfully submitted,

/s/ Anthony G. Simon

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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon all counsel of record via this Court's CM/ECF system on October 16, 2020.

/s/ Anthony G. Simon